IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2022 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.THAKER

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GADHAVI GARAVDAN GOVINDBHAI - Petitioner(s)
Versus
PATEL MANGABHAI SHAMBHUBHAI & 2 - Respondent(s)

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Appearance :

MR HN BRAHMBHATT for Petitioner(s) : 1,
MR KH BAXI for Respondent(s) : 1 - 2.
Ms. Trusha Patel, Asst.GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.THAKER

Date : 24/12/2007
ORAL JUDGMENT

In this petition under Article 227, the petitioner has challenged order dated 7.1.1992 (Annexure 'B') passed by respondent No.3 whereby the respondent No.3 has set aside order dated 30.5.1990 passed by Deputy Collector, Godhra.

2. The petition is preferred by one Shri Garavdanji Gadhavi who, as per the facts flowing from the record of this petition, transferred the land in question on 2.4.1980 (i.e.,before the impugned order came to be passed) in favour of his son Shri Sanjaykumar as part of family arrangement and thereby according to the respondent, lost the cause and locus.

3. The facts, in background of which present controversy is raised, can be summarised as follows;

(1) The petitioner Shri Garavdanji Gadhavi was owner of and in possession of land bearing Survey No. 221/1 in Moje Charangam (Namnara), Taluka Lunawada.

(2) The respondents No. 1 and 2, Shri Patel Mangabhai Shambhubhai and Shri Patel Somabhai Shambhubhai were owners and in possession of land bearing survey No. 5/1 in the same village i.e. Moje Charangam (Namnara), Taluka Lunawada.

(3) Then, by virtue of an agreement between the

petitioner and the respondents No. 1 and 2, they, inter-se, exchanged their respective lands. This agreement was reduced to writing on a stamp paper of Rs. 3.50 on 14.6.1974 whereby petitioner, Shri Garavdan Gadhavi transferred the land of his ownership being survey No. 221/1 in favour of the respondents No. 1 and 2, i.e., Shri Patel Mangabhai Shambhubhai and Shri Patel Somabhai Shambhubhai. In exchange, the respondents No. 1 and 2,i.e. Shri Patel Mangabhai Shambhubhai and Shri Patel Somabhai Shambhubhai transferred the land of their ownership, i.e., survey No. 5/1 in favour of petitioner, Shri Garavdan Gadhavi.

(4) The parties acted upon the said agreement and the said arrangement was also reflected in the village record/Form No. 7/12. In this regard, Entry No. 644 was made on 23.3.1975.

(5) It appears that the abovereferred survey No. 5/1 was probably a fragment and therefore the Deputy Collector, Godhra held an enquiry in respect of the aforesaid transfer and after hearing the parties passed an order dated 30.5.1990 holding that the said

inter-se transfer had resulted into breach of provisions of the Bombay Fragmentation and Consolidation of Holdings Act, 1947 [hereinafter referred to as 'the Fragmentation Act'] and he declared the said transaction invalid under Section 9(1) of the Act. The said authority also imposed fine of Rs. 250 on the owner and occupant and also directed that the possession of the said land be returned to the original-owner.

(5.1). At this stage, it is pertinent to note that the said proceedings were initiated at the instance of the petitioner inasmuch as it was the petitioner who, after lapse of almost 15 years since the transaction was executed, made an application dtd. 23-1-89 to the Dy. Collector and prayed for restoration of position qua the lands, existing prior to the transfer in question.

(5.2). In other words the petitioner, who was party to the transfer of lands, and who enjoyed the benefits of transfer, moved the application after 15 years and challenged the transfer, to which he was

party and demanded restoration of original position.

(6) The respondents herein, being aggrieved and dissatisfied with the said order, preferred a revision application before Secretary (Appeals) who passed an order dated 7.1.92/11.1.92 (Annex-B) whereby he allowed the revision application and set aside the order dated 30.5.1990.

4. Upon being aggrieved by the said order dated 7.1.1992, the petitioner, who was a party to the arrangement, has preferred the present petition.

5. Heard Mr. Brahmbhatt, ld. advocate for petitioner and Mr. KH Baxi, ld. Advocate for respondents No. 1 and 2 and Ms. Patel, ld. AGP for respondent No.3.

6. It is, at the outset, pertinent to note that, in the order dated 7.1.1992 the respondent No.3 authority has recorded a factual position to the effect that petitioner Garavdan Gadhavi had, on 2.4.1980, as part of family arrangement/partition, transferred the land bearing survey No. 5/1 in favour

of his son Sanjaykumar. In this background of fact, Mr. Bakshi, learned advocate for the respondents raised a contention that after 2.4.1980 the present petitioner at the relevant time did not have and now also he does not have any locus with regard to the land bearing survey No. 5/1 and therefore present petition by said Shri Garavdan Gadhavi is not maintainable.

7. It is pertinent that the transfer in question took place with consent of parties and by virtue of an agreement dated 14.6.1974, and the Deputy Collector initiated the proceedings under the Fragmentation Act after almost 15 years, i.e., some where in 1990. Thus, the said proceedings by the Deputy Collector, in which the order dated 30.5.1990 came to be passed, are hit by the vice of delay.

8. Mr. Brahmbhatt, learned advocate for the petitioner challenged the order dated 7.1.1992, contending, inter alia, that the Deputy Collector was right in holding that the transfer was in breach of the provisions under the Fragmentation Act and

therefore the transfer was rightly cancelled. Mr. Brahmbhatt, learned advocate for the petitioner, however, could not respond to the contention of Mr. Baxi, learned advocate for the respondent that the proceedings initiated by the Deputy Collector were hit by the vice of delay and therefore the order dated 30.5.1990 was untenable. Mr. Brahmbhatt, also could not effectively respond to Mr. Baxi, advocate for respondent, raising the contention about petitioner's locus of prosecuting the matter after having transferred the land in question in favour of his son way back in April 1980, i.e., even before the proceedings which came to be initiated by the Deputy Collector.

9. It is pertinent that the respondent No.1 has recorded in his order dated 7.1.1992 that present petitioner, after having reaped the fruits of the transfer of lands in question, got the proceedings initiated for taking back the possession of the lands which the petitioner had transferred in favour of the respondents and the respondents invested almost Rs. 40,000 in improving the quality of land and for

developing it. Mr. Baxi, learned advocate for the respondents stressed that, the action on part of the petitioner was malafide.

10. It is relevant that in the order dated 30.5.1990 of Deputy Collector it is recorded that the proceedings were initiated pursuant to an application dated 23.1.1989 preferred by the petitioner.

11. In other words, the petitioner after having enjoyed the fruits of the transfer of lands for 15 years made an application to the authority raising doubt about the transaction to which he was a party.

12. Mr. Baxi, learned advocate for the respondents also referred to the text of the order dated 7.1.1992 in which respondent No.3 has taken note of the submissions of respondents to the effect that the lands which came in possession of the petitioner on account of the transfer, i.e., the land originally owned by respondents, was used by petitioner to plant Eucalyptus thereon. In

submission of Mr. Baxi, learned advocate for the respondent, it is a well-known fact in field of agriculture that Eucalyptus adversely affects the quality of land and it was in that view of the matter that when the land remained of no particular use to the petitioner, that he approached the authority with application dated 23.1.1989 and got the proceedings initiated. By emphasizing the said observations in the order, Mr. Baxi contended that the action of the petitioner was acutuated by mala fides and in any case the delay vitiated the proceedings and therefore the respondent No.3 has rightly set aside the order dated 30.5.1990 passed by the Deputy Collector.

13. I have heard the aforesaid submissions of learned advocates, Mr. Brahmbhatt and Mr. Baxi. It is true that the Deputy Collector has recorded in his order dated 30.5.1990 that the petitioner had submitted application dated 23.1.1989 and requested that original-position may be restored. It is an action by petitioner after having enjoyed the fruits of his own action for 15 years.

14. The facts recorded in the order dated 7.1.1992 by respondent No.3, viz., (i) the petitioner transferred the land in question, i.e., survey No. 5/1 in favour of his son in April 1980; (ii) that the respondents spent almost Rs. 40,000 for developing the land and improving its quality; (iii) and that the petitioner used the land bearing survey No. 221/1 (which came in his possession by virtue of the voluntary act of petitioner and respondents) for planting and cultivating Eucalyptus which contributed in deterioration of the quality of the land bearing survey No. 221/1; (iv) that the proceedings came to be initiated after delay of 15 years, have not been disputed by the petitioner during the hearing.

15. The cumulative effect of the aforesaid aspects, in my view, is that the said facts conclusively demonstrate that the action of the petitioner lacks in and is devoid of bonafides. Even if the issue of intention is overlooked for a moment, then also the inherent vice of delay in the proceedings would subsist. The said vice is more than enough to vitiate the proceedings and the order dated 30.5.1990. Under the circumstances, the order

dated 7.1.1992 passed by respondent No.3 holding, inter alia, that the said proceedings by the Dy. Collector were time barred and setting aside of the order dated 30.5.1990 cannot be faulted. Even otherwise, the said order dated 7.1.1992 does not suffer from any error of jurisdiction or any apparent error of law. Therefore also, in exercise of jurisdiction under Article 227 of the Constitution of India, this Court cannot interfere with the said order. Besides this, no ground much less a strong justification, has been made out by the petitioner against the said order dated 7.1.1992 to warrant interference against the said order dated 7.1.1992. In fact, the petitioner has failed to make out any case against the said order and has not been able to justify the delay. Therefore, even if the issue about petitioner's intentions is not touched, then also there is no basis or justification to set aside the order dated 7.1.1992 by which the order dated 30.5.1990 is set aside in view of the fact that it was passed after inordinate delay. In view of the aforesaid discussion, the contention raised by the respondents, as regards the locus of the petitioner

in prosecuting the present petition, does not require to be determined at this stage.

16. In light of the aforesaid discussion, the petition fails. The petitioner has not made out any case to set aside the impugned order dated 7.1.1992. Hence, the petition is dismissed. Rule discharged.

Interim relief is vacated forthwith. No order as to costs.

[K.M. Thaker, J.]

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